

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID SABINO QUAIR III,

Petitioner,

v.

MATT DARBY,

Respondent.

Case No. 1:22-cv-01142-JLT-EPG-HC

ORDER TERMINATING PETITIONER'S
MOTIONS FOR APPOINTMENT OF
COUNSEL AND MOTION TO PROCEED
IN FORMA PAUPERIS

(ECF Nos. 23, 24)

Petitioner David Sabino Quair III is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On January 5, 2023, the undersigned issued findings and recommendations to dismiss the petition without prejudice for failure to exhaust state judicial remedies. (ECF No. 20.) The findings and recommendation were served on Petitioner and contained notice that any objections were to be filed within thirty (30) days of the date of service of the findings and recommendations. (*Id.*) In lieu of filing objections, Petitioner filed a notice of appeal on January 17, 2023. (ECF No. 21.) That same day, Petitioner filed the instant motion for appointment of counsel and motion to proceed *in forma pauperis*. (ECF Nos. 23, 24.)

Petitioner seeks authorization to appeal *in forma pauperis* pursuant to Federal Rule of Appellate Procedure 24. (ECF No. 24.) This Court previously permitted Petitioner to proceed *in forma pauperis* in this action. (ECF No. 10.) Accordingly, Petitioner does not require further

1 authorization to appeal *in forma pauperis*. Fed. R. App. P. 24(a)(3). Petitioner also moves for
2 appointment of counsel on appeal. (ECF No. 23.) However, as that motion is addressed to the
3 Ninth Circuit, this Court will not rule on the motion.

4 Accordingly, IT IS HEREBY ORDERED that Petitioner's motion for appointment of
5 counsel (ECF No. 23) and motion to proceed *in forma pauperis* (ECF No. 24) are terminated as
6 moot.

7
8 IT IS SO ORDERED.

9 Dated: **January 19, 2023**

/s/ Eric P. Grogan
10 UNITED STATES MAGISTRATE JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28